

APPENDIX A

BEFORE THE BOARD OF TRUSTEES OF THE
GROSSMONT UNION HIGH SCHOOL DISTRICT
COUNTY OF SAN DIEGO
STATE OF CALIFORNIA

In the Matter of:) Resolution No. 2010-03
)
The Charter Petition)
of Magna Carta)
Secondary School)
)

WHEREAS, the establishment of charter schools is governed by the Charter Schools Act of 1992, as subsequently amended, Education Code sections 47600 *et seq.* and implementing Title 5 of the California Code of Regulations;

WHEREAS, on or about April 21, 2009, the Governing Board the Grossmont Union High School District (“Governing Board”) received the proposed charter petition (“Petition”) to establish the Magna Carta Secondary School (“Magna Carta” or “Charter School”);

WHEREAS, consistent with Education Code section 47605 subdivision (b), at a regular meeting on May 14, 2009, the Governing Board held a public hearing on the Petition, at which time the Governing Board considered the level of support for the Petition by teachers employed by the Grossmont Union High School District (“GUHSD” or “District”), other employees of the District, and parents and found that charter petitioner Tim Tuter was the only person who spoke in favor of the Petition;

WHEREAS, the Governing Board has convened on July 9, 2009, to consider whether to grant or deny the Petition;

WHEREAS, approvals of charter petitions are governed by the standards and criteria set forth in Education Code section 47605 and implementing Title 5 of the California Code of Regulations;

WHEREAS, Education Code section 47605 subdivision (b) prohibits the Governing Board from denying a charter petition unless it makes written factual findings, specific to the particular charter school, setting forth specific facts to support one or more findings, which include:

1. The petition does not contain the number of signatures required by Education Code section 47605 subdivision (a);
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition;

3. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school;

4. The petition does not contain an affirmation of each of the conditions described in Education Code section 47605 subdivision (d); or

5. The petition does not contain reasonably comprehensive descriptions of all elements required in Education Code section 47605 subdivision (b)(5).

WHEREAS, a District Charter Review Team has identified numerous deficiencies in, and concerns related to, the Petition, and recommends that the Governing Board adopt the Findings of Fact, attached hereto as Exhibit "A" and incorporated herein by this reference, and deny the Petition;

THEREFORE BE IT RESOLVED THAT:

The Governing Board hereby adopts the Findings of Fact, attached hereto as Exhibit "A", and denies the Petition;

Passed and adopted on this 9th day of July, 2009, at a duly noticed meeting of the Board of Trustees, by the following vote:

AYES: 5 NOES: 0 ABSENT: _____ ABSTAIN: _____

I, Robert Collins, Clerk of the Governing Board of the Grossmont Union High School District, HEREBY CERTIFY that the foregoing Resolution was duly introduced, passed and adopted by the Governing Board at a meeting thereof held on the 9th day of July, 2009, by a vote of 5 to 0.

IN WITNESS THEREOF, I have hereto set my hand this 9th day of July, 2009.


Robert Collins
Superintendent

EXHIBIT "A"
FINDINGS OF FACT

1. **The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition because the petitioners' past history of involvement in charter schools has been unsuccessful.**
 - a. **Unauthorized Establishment of Charter School Sites/Facilities.** The petitioners are involved in another charter school that is currently in violation of the law and not in good standing with the local educational agency that granted their charter. The petitioners of the Magna Carta Secondary School ("Magna Carta ") are directly involved with the Charter School of San Diego ("CSSD"). Specifically, Mary Searcy Bixby is the Executive Director/CEO of CSSD. CSSD operates through a charter granted by the San Diego Unified School District ("SDUSD"). On April 7, 2009, SDUSD notified CSSD that it was in violation of its charter because CSSD established two sites without the approval of SDUSD and outside the boundaries of SDUSD, in violation of Education Code sections 47605 subdivision (a). Because the unauthorized CSSD facilities are currently operating within Grossmont Union High School's ("GUHSD") boundaries, GUHSD has sent a letter to Ms. Bixby to direct her to cease and desist in CSSD's unauthorized activities. Ms. Bixby's refused, which has resulted in further communications from GUHSD to the County Superintendent of Schools regarding the ongoing violations.

2. **The charter school presents an unsound educational program because the program would not likely be of educational benefit to the students who attend.**
 - a. **Significant Decrease in Academic Performance.** Magna Carta is modeled from the educational program at CSSD. However, CSSD has had a significant decrease in academic performance over the course of several years. For example, in the last reporting period, CSSD failed to meet its Academic Performance Index ("API") growth target and reported an API growth of (-5). The figures for subgroup population was an API of (-15) for African American students, (-17) for Hispanic or Latino students, and (-7) for socio-economically disadvantaged students. During the past four years, the API of CSSD has steadily declined from 658 in 2005 to 626 in 2006 to 623 in 2007 and most recently to 618 in 2008. Scores on the California Standards Test are also low, while drop out rates remain high. The counseling ratio at 928:1 is more than double the GUHSD average. Petitioners state that all Magna Carta Secondary School teachers will be "Highly Qualified." Schools are required to meet No Child Left Behind regulations by employing teachers who are identified as being highly qualified. This includes having an appropriate credential to teach the class they are assigned to. At CSSD, 9.36% of English teachers are noncompliant with the Federal guidelines; 11.43% of mathematics

teachers are noncompliant; 11.94% of science teachers are noncompliant and 7.9% of social science teachers are noncompliant. 9.1% of classes at CSSD are taught by Non-compliant teachers. In 2007-08, 22 of 93 teachers (23.6%) at CSSD were teaching in a subject area outside of their competence. In literature published by the CSSD it is stated that “all CSSD teachers hold a valid California teaching credential and that CSSD supports the objectives of NCLB: ensuring that every student has a great teacher who is qualified in all the subjects they teach.” However, that is not the case in the actual assignment of CSSD teachers.

While acknowledging the target student population includes “at-risk” individuals who have struggled within the traditional school system, it is the steady decline in CSSD’s API and practices by the same management personnel that would operate Magna Carta that support a finding that Magna Carta would not be of educational benefit to the students who attend.

b. **Pursuit of Geographically Removed Special Education Services.**

Magna Carta has predetermined that it will not operate in a cooperative manner with GUHSD with regard to the needs of special education students. When it submitted its petition to GUHSD, Magna Carta stated that it will operate as a member of the El Dorado Special Education Local Plan Area (“Charter SELPA”). The Charter SELPA accepts charter schools as members based on the following:

1. The Charter SELPA is designed to assist charter schools throughout California when they are approved by the State Board of Education as a statewide benefit charter or upon appeal and do not have a defined SELPA that has accepted them.
2. The Charter SELPA is additionally designed to assist charter schools that have been unable to develop a “workable” relationship in the area of special education with their authorizer and/or SELPA and have sought relief from the Charter SELPA. A one year notice of intent to leave their current SELPA is required, unless a shorter timeline is mutually agreed to by the current SELPA serving the charter school. During the one year notice period, the Charter SELPA will work collaboratively with the geographic SELPA to attempt to mitigate the differences in order to determine if remaining in the geographic SELPA is a viable alternative.

GUHSD is geographically located within and a member of the East County SELPA. Magna Carta has not been approved as a statewide benefit charter and has never attempted to pursue an agreement with GUHSD and/or East County SELPA regarding the provision of special education services. Rather, Magna Carta elected to submit a petition that eliminates any opportunity for the parties to work collaboratively and in

the best interests of special education students. As noted by the El Dorado Charter SELPA, it accepts charter schools as members as an “alternative” in cases where the geographic SELPA is unavailable. Thus, Magna Carta’s attempt to circumvent the process is not in the benefit of students who are eligible to receive special education instruction.

3. **The petition does not contain reasonably comprehensive descriptions of all elements required in Education Code section 47605 subdivision (b)(5).**
 - a. **Vague and Self-Interested Governance Structure.** The petition fails to present a clear description of Magna Carta’s governance structure, which is required by Education Code section 47605 subdivision (b)(5)(D). The original petition submitted by Magna Carta provided the following information.

Original petition on page 2 states:

[Magna Carta] functions as one of a network of charter schools established and superintended by Altus Institute. Altus Institute is a separate entity and has its own judicial personality. [Magna Carta] functions as a separate business and operational entity, governed by its own local school board.

Original petition on page 13 states:

[Magna Carta] will be a subsidiary of Altus Institute. The charter school’s operational management shall be the responsibility of this corporation, which shall operate within the terms and conditions specified in this petition. The proposed name of the corporation is “Altus-Magna Carta, Inc.”

The corporation will retain the right to enter a charter agreement with another sponsoring agency to establish a charter school outside of the [GUHSD].

GUHSD questioned the independence of Magna Carta as a charter school based on its proposed relationship to Altus Institute as a subsidiary. In response, the petitioners submitted a revised petition on July 2, 2009, that deleted all references to Altus and claimed that Magna Carta should be considered an independent entity.

The petitioners’ superficial attempt to technically remove all reference to “Altus” in the revised Magna Carta petition has not eliminated GUHSD’s concerns regarding the governance structure. Ms. Bixby is the President/CEO of Altus and the Executive Director/CEO of CSSD. She will serve on the board of trustees of Magna Carta. The petitioners share business addresses, telephone numbers and other resources with Altus and its affiliates, and have communicated that they may incorporate any CSSD

site operating within GUHSD's boundaries into Magna Carta. CSSD has apparently utilized legal counsel and/or waived attorney-client privilege for the benefit of Magna Carta's Petition. Moreover, the other Magna Carta board members, Owen T. Sweeney and Jane D. Gawronski, are both employed by or otherwise connected with Altus. Thus, the organizational scheme presents a continued affiliation between Altus, CSSD and Magna Carta.

The Petition and supporting materials do not indicate that Magna Carta's structure would allow for or ensure active and effective representation of interested parties, including parents/guardians. The proposed Bylaws state that there will be a minimum of three and no more than nine members of the Board. Directors would be nominated and elected by a majority of Directors then in office. There is no provision which guarantees representation of parents or Grossmont community members on the Magna Carta board. The proposed Bylaws and actual practice within the Altus Institute and affiliated charters is to maintain control by a small group of individuals who are compensated by Altus or one of its affiliates. With regard to Mr. Sweeney, Magna Carta has submitted documents indicating that he resides in the State of Hawaii. While acknowledging that charter schools do not have traditional attendance boundaries, they are limited to enrolling students who reside within the State of California.

Based on the apparent control of Magna Carta by "interested persons"/employees of Altus and its affiliates and weak structure for allowing the representation of interested parties, including parents/guardians, it is the judgment of GUHSD that there is sufficient evidence that the educational program is not likely to be successful because the governance structure has not been presented in a reasonably clear manner.

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